IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 30576 of 2007(M)

CMA.40/2005 of ADL.SUB COURT, THALASSERY
OS.448/1997 of MUNSIF COURT, KUTHUPARAMBA
(IA 1485/2001)
.....

PETITIONER:

P.K.ALI, S/O. AHAMMEDKUTTY,
KOLARI AMSOM, KALLUR DESOM, THALASSERY TALUK.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.S.LAKSHMY

RESPONDENTS:

P.SAMAD, S/O MAMMU,KOLARI AMSOM,
KALLUR DESOM, THALASSERY TALUK,
PIN: 679 532

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 30576 OF 2007

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Dated this the 24th day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Ext.P9 and P9(a) orders. The suit is one for specific performance of the contract and the suit had been decreed exparte. Applications have been filed to condone the delay and set aside the exparte decree as I.A. Nos.1484 and 1485 of 2001. The trial court on a consideration of the materials found that there are no sufficient grounds and hence dismissed the applications. Against that the petitioner filed a CMA before the Court and that also ended in dismissal. It is against that decision the present writ petition is filed. The suit was decreed exparte on 29.11.99. There was a delay of 540 days in filing the application to set aside the exparte decree. The ground alleged was that he had to rush to Bombay in connection with the illness of his son-in-law and therefore could not file the application in time. The Court below found by Ext.B1 that

the presence of the writ petitioner was very much in the native place in December, 1999. PW1 has also deposed that he was a witness in Ext.B1 suit. It is also submitted that earlier the present writ petitioner had taken a stand that his daughter was laid up, for setting aside the exparte decree and it was allowed by the Court. In order to satisfy the conscious of the Court the petitioner should have at least produced some piece of documentary evidence to show that his son-in-law was unwell at Bombay especially in the back drop that on a previous occasion in the very same suit he had taken the ground that his daughter was ill. Therefore, the Court below rightly found that there is not even a reasonable explanation tendered to excuse the delay in filing the application. In a writ petition of this nature this Court cannot substitute its views on facts even if two views are possible. I do not find any perversity, illegality or irregularity in the orders passed by the Court below and therefore the writ petition is dismissed.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-